

WILLIAM S. SCHICKTANZ

IBLA 77-407

Decided August 31, 1977

Appeal from decision of Utah State Office, Bureau of Land Management (BLM), requiring additional rental in connection with noncompetitive oil and gas lease offers U-35823, U-35824, U-35827, U-35828.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:
Rentals--Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate applies to all leases issued after that date, regardless of the date on which the offer to lease was originally submitted.

APPEARANCES: William S. Schicktanz, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

William S. Schicktanz has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated May 17, 1977, giving notice of rental due in connection with noncompetitive oil and gas lease offers U-35823, U-35824, U-35827, and U-35828. The notice informed appellant that the first year's advance lease rental for each of the offers had to be paid to BLM, at the increased rate of \$1 per acre, within 15 days in order to avoid rejection of the offers.

On appeal appellant states that his lease offers were filed with BLM on November 19, 1976, which was prior to the effective date of the rental rate increase as set forth at 42 F.R. 1032 (January 5,

1977), revising 43 CFR 3103.3-2. Appellant contends that there is no reason why leases could not have been issued in December 1976, and that the delay in issuing the leases was caused solely by BLM and not by appellant. He also states that the "delay should not be used as an excuse for doubling the rental rate as a result of promulgating the new regulation."

[1] The mere filing of an application for a noncompetitive oil and gas lease does not create any right to a lease or generate any legal interest which reduces or restricts the discretionary authority of the Secretary of the Interior over lease issuance. Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969). Filing a noncompetitive oil and gas lease offer does not create a vested right protected by the Fifth Amendment to the Constitution from application of a subsequently amended administrative regulation. Hannifin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971); Barbara A. Joeckel, 30 IBLA 376 (1977). Appellant's assertion that BLM delayed in issuing his leases is of no moment as issuance of such a lease is discretionary and BLM is under no duty to act immediately to issue a lease each time a noncompetitive oil and gas lease offer is filed with it.

The Board has recently decided numerous appeals presenting the same issue involved herein, and in all those cases we have affirmed BLM decisions requiring payment of the increased rental for any lease issued after February 1, 1977. E.g., Wanda C. Scheidt, 30 IBLA 346 (1977); Barbara A. Joeckel, supra; Raymond N. Joeckel, 29 IBLA 170 (1977).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

